

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 3

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 7, Article 13,
Section 3441(a) of the General Industry Safety Orders

Operation of Agricultural EquipmentSUMMARY

This rulemaking action is the result of Occupational Safety and Health Standards Board (Board) staff review of a Decision by the Occupational Safety and Health Appeals Board (Appeals Board) in the matter of Herrera Packing Co., Inc., Appeals Board Docket No. 99-R4D5-916. In the matter of this appeal, the Administrative Law Judge determined that the provisions contained in the General Industry Safety Orders, Section 3441(a) oblige the employer to provide instructions for the safe operation of agricultural equipment. However, the regulation does not address the employer's obligation to enforce those instructions and operating rules. This rulemaking action makes amendments for clarity to ensure that the instructions and operating rules for the safe operation of agricultural equipment provided in Section 3441(a) are enforceable.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTIONSection 3441. Operation of Agricultural Equipment.Subsection (a) Operating Instructions.

Existing Section 3441(a) requires that the agricultural employer instruct every employee in the safe operation and servicing of all equipment to include at least the provisions contained in Section 3441(a)(1) through (a)(5). An amendment is proposed to the title of subsection (a) to add the term "and safe work practices" to clarify the content of subsection (a). Amendments are also proposed to divide subsection (a) into two subsections, (a)(1) and (a)(2), with language proposed for new subsection (a)(2) that is necessary to ensure the employer's instructions with respect to safe work practices and operating rules are enforced by the employer.

Further, existing subsection (a)(3), proposed as subsection (a)(2)(C), requires the employer to "instruct employees" in the steps and procedures necessary to safely service or maintain

equipment. A proposed amendment deletes the reference to employer instruction and adds language to require that all steps and procedures “shall be taken” to safely service or maintain equipment. The amendment is necessary for clarity and consistency with the requirements of subsection (a) and to eliminate duplicating requirements for employer instruction that are already provided in the amendments to proposed subsection (a)(1).

DOCUMENTS RELIED UPON

Occupational Safety and Health Appeals Board Decision dated June 20, 2000, in the matter of the Appeal of Herrera Packing Co., Inc., Docket 99-R4D5-916.

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant statewide adverse economic impact affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, these regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.